A

CHIN CHAN LEONG

v.

PP & ANOR

B

COURT OF APPEAL, PUTRAJAYA
LOW HOP BING JCA
KN SEGARA JCA
RAMLY ALI JCA
[CRIMINAL APPEAL NOS: W-09-87-2008 & W-09-88-2008]

C

17 DECEMBER 2009

CRIMINAL PROCEDURE: *Charge - Form of charge - Framing or particulars of - Whether charges vague and uncertain - Procedural and substantive law, whether complied with - Whether charges defective - Criminal Procedure Code, ss. 152, 153, 154 - Securities Industry Act 1983, s. 84(1)*

D

CRIMINAL PROCEDURE: *Charge - Amendment - Whether manner of abetment not specified in abetment charges - Procedural and substantive law, whether complied with - Whether charges defective - Criminal Procedure Code, ss. 152, 153, 154 - Securities Industry Act 1983, s. 84(1), 122C(c)*

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These were two appeals by the first and second accused against the decision of the High Court judge allowing the prosecution's appeal and setting aside the decision of the Sessions Court dated 5 June 2006. The first accused faced two charges in the Sessions Court under s. 84(1) of the Securities Industry Act 1983 ('Act'), while two abetment charges were preferred against the second accused under s. 84(1) read with s. 122C(c) of the Act. The first accused raised a preliminary objection on the ground that the two charges against him were vague and uncertain. The second accused also raised a preliminary objection, contending that the manner of the abetment alleged was not specified in the abetment charges. The Sessions Court judge sustained those objections and directed the prosecution to give the first accused further particulars relating to the two principal charges against him, and to amend the two abetment charges against the second accused. In allowing the appeals by the prosecution, the High Court judge directed the trial in the Sessions Court to proceed accordingly. Being dissatisfied, both accused filed the present appeals, submitting that the High Court judge had erred in setting aside the directions of the Sessions Court judge. The deputy public prosecutor, however,

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averred that the High Court judge was correct in holding that the charges were not defective and had indeed complied with ss. 152 to 154 of the Criminal Procedure Code ('Code').

Held (dismissing the appeals)
Per Low Hop Bing JCA delivering the judgment of the court:

(1) Sections 152 to 154 of the Code contain comprehensive provisions regulating the form of a charge, the particulars as to time, place and person to be included therein and the manner of committing the offence. In relation to the first accused, it was clearly shown, on the facts, that the prosecution had complied with the procedural law contained in ss. 152 to 154 of the Code and the substantive law under s. 84(1) of the Act. With reference to the second accused, although the prosecution was at liberty to prefer a charge of abetment generally under s. 122C(c) of the Act, it had specifically gone the extra mile and set out the particulars of the principal charges against the first accused in the abetment charges preferred against the second accused. There was no doubt that, in relation to the abetment charges, the prosecution had complied with the procedural law contained in ss. 152 to 154 of the Code and the substantive law enacted in s. 84(1) read with s. 122C(c) of the Act. The foregoing grounds demonstrated that these two appeals were devoid of merits. (paras 11, 14 & 15)

Bahasa Malaysia *Translation Of Headnotes*

Ini adalah dua rayuan oleh tertuduh pertama dan kedua terhadap keputusan hakim Mahkamah Tinggi membenarkan rayuan pendakwaan dan mengenepikan keputusan Mahkamah Sesyen bertarikh 5 Jun 2006. Tertuduh pertama menghadapi dua pertuduhan dalam Mahkamah Sesyen di bawah s. 84(1) Akta Perindustrian Sekuriti 1983 ('Akta'), sementara dua pertuduhan pensubahatan dibuat terhadap tertuduh kedua di bawah s. 84(1) dibaca bersama-sama dengan s. 122C(c) Akta. Tertuduh pertama membangkitkan sesuatu bantahan awalan atas alasan bahawa kedua-dua pertuduhan terhadapnya merupakan tidak jelas dan tidak pasti. Tertuduh kedua juga membangkitkan sesuatu bantahan awalan dengan menghujah bahawa cara pensubahatan yang dikatakan tidak ditetapkan dalam pertuduhan-pertuduhan pensubahatan. Hakim Mahkamah Sesyen membenarkan bantahan-bantahan tersebut dan mengarahkan pendakwaan untuk

memberikan tertuduh pertama butir lanjut berkenaan dengan dua tuduhan utama terhadapnya, dan untuk meminda dua pertuduhan pensubahatan terhadap tertuduh kedua. Dalam membenarkan rayuan-rayuan oleh pendakwaan, hakim Mahkamah Tinggi mengarahkan perbicaraan dalam Mahkamah Sesyen untuk dijalankan sewajarnya. Berasa tidak puas hati, kedua-dua tertuduh memfailkan rayuan-rayuan semasa, menghujahkan bahawa hakim Mahkamah Tinggi khilaf apabila mengenepikan arahan-arahan hakim Mahkamah Sesyen. Penolong pendakwa raya, walau bagaimanapun, mendakwa bahawa hakim Mahkamah Tinggi betul apabila memutuskan bahawa pertuduhan-pertuduhan tidak cacat dan telah mematuhi ss. 152 hingga 154 Kanun Tatacara Jenayah ('Kanun').

Diputuskan (menolak rayuan-rayuan)

Oleh Low Hop Bing HMR menyampaikan penghakiman mahkamah:

(1) Seksyen-seksyen 152 hingga 154 Kanun mengandungi peruntukan-peruntukan komprehensif yang mengawal bentuk satu pertuduhan, butir tentang masa, tempat dan orang untuk dimasuki ke dalamnya dan cara kesalahan itu dilakukan. Berhubung dengan tertuduh pertama, ia jelas dibuktikan, berdasarkan fakta-fakta, bahawa pendakwaan telah mematuhi undang-undang prosedural yang dikandungi dalam ss. 152 hingga 154 Kanun dan undang-undang substantif yang dikandungi dalam s. 84(1) Akta. Berkaitan dengan tertuduh kedua, walaupun pendakwaan adalah bebas untuk membuat satu pertuduhan pensuhabatan secara umum di bawah s. 122C(c) Akta, ia telah buat lebih daripada itu dan telah meletakkan butir pertuduhan utama terhadap tertuduh pertama dalam pertuduhan pensubahatan yang dibuat terhadap tertuduh kedua. Tidak ada keraguan bahawa, berkenaan dengan pertuduhan pensubahatan, pendakwaan telah mematuhi undang-undang prosedural yang dikandungi dalam ss. 152 hingga 154 Kanun dan undang-undang substantif yang digubal dalam s. 84(1) dibaca bersama-sama dengan s. 122C(c) Akta. Alasan-alasan di atas menunjukkan bahawa kedua-dua rayuan semasa tidak mempunyai apa-apa merit.

Case(s) referred to:
Ab Malek Atan v. PP [2002] 6 CLJ 405 HC ***(refd)***
Datuk Hj Harun Hj Idris & Ors v. PP [1977] 1 LNS 24 ***(refd)***
Loh Liang Gun & Anor v. PP [2007] 4 CLJ 467 CA ***(refd)***
Pasupathy Kanagasaby v. PP [2005] 1 CLJ 442 CA ***(refd)***

Legislation referred to:
Criminal Procedure Code, ss. 152(1), (2), 153(1), 154, 158
Penal Code, ss. 107, 109, 420
Securities Industry Act 1983, ss. 84(1), 88B, 122C(c)

Other source(s) referred to:
AIR Commentaries on the Code of Criminal Procedure, 7th edn, vol 2, pp 562, 563

For the 1st appellant - Raja Navaratnam; M/s Rajan Navaratnam
For the 2nd appellant - Edmond Bon Tai Soon; M/s Chooi & Co
For the 1st respondent - Roz Mawar Rozain DPP
For the 2nd respondent - M/s Vinod Kamalanathan & Assoc

[Appeal from High Court, Kuala Lumpur; Criminal Appeal No: 42-61-2006]

[Editor's note: For the High Court judgment, please see PP v. Chin Chan Leong & Anor [2009] 6 CLJ 179.]

Reported by Suresh Nathan

JUDGMENT

Low Hop Bing JCA:

Appeals

[1] These two appeals were lodged by the appellants ("the first and second accused") against the decision of the learned High Court judge who had on 11 November 2008 allowed the prosecution's appeal and set aside the decision of the sessions court dated 5 June 2006.

Factual Background

[2] The first accused faces two charges in the sessions court, under s. 84(1) of the Securities Industry Act 1983, punishable under s. 88B thereof.

[3] These charges merit reproduction as follows:

First Charge

That you, between 18 November 2003 and 20 January 2004, at Kuala Lumpur Stock Exchange, 14th Floor, Exchange Square, Bukit Kewangan, 50250 Kuala Lumpur, created a misleading appearance of active trading in Fountain View Development Berhad (Company No. 585360-T) shares on a stock market, that is, the Kuala Lumpur Stock Exchange (now known as Bursa Malaysia Securities Berhad), by indirectly being concerned in transactions of sale and purchase of Fountain View Development Berhad shares that do not involve any change in the beneficial ownership of the said Fountain View Development Berhad shares, through the central depository securities accounts listed in the Appendix to this charge, and you have thereby committed an offence under section 84(1) of the Securities Industry Act 1983 (Act 280) punishable under section 88B of the same Act.

Second Charge

That you, between 18 November 2003 and 20 January 2004, at Kuala Lumpur Stock Exchange, 14th Floor, Exchange Square, Bukit Kewangan, 50250 Kuala Lumpur, caused to be created a misleading appearance with respect to the price of Fountain View Development Berhad (Company No. 585360-T) shares on a stock market, that is, the Kuala Lumpur Stock Exchange (now known as Bursa Malaysia Securities Berhad), by indirectly being concerned in transactions of sale and purchase of Fountain View Development Berhad shares that do not involve any change in the beneficial ownership of the said Fountain View Development Berhad shares which have the effect of raising the price of Fountain View Development Berhad shares, which transactions were executed through the central depository securities accounts listed in the Appendix to this charge, and you have thereby committed an offence under section 84(1) of the Securities Industry Act 1983 (Act 280) punishable under section 88B of the same Act.

[4] Two abetment charges were preferred against the second accused, under s. 84(1) read with s. 122C(c) of the same Act, punishable under s. 88B thereof. These abetment charges are set out *in extenso* as follows:

First Charge

That you, between 18 November 2003 and 20 January 2004, at Avenue Securities Sdn Bhd, Ground Floor, THB Satu, Jalan Damansara Endah, Damansara Heights, 50490 Kuala Lumpur, abetted Chin Chan Leong (NRIC No. 531023-10-5669) who created a misleading appearance of active trading in Fountain View Development Berhad (Company No. 585360-T) shares on a stock market, that is, the Kuala Lumpur Stock Exchange (now known as Bursa Malaysia Securities Berhad), where Chin Chan Leong was indirectly being concerned in transactions of sale and purchase of Fountain View Development Berhad shares that do not involve any change in the beneficial ownership of the Fountain View Development Berhad shares, through the central depository securities accounts listed in the Appendix to this charge, and the said offence was committed pursuant to your abetment and you have thereby committed an offence under section 84(1) read together with section 122C(c) of the Securities Industry Act 1983 (Act 280) punishable under section 88B of the same Act.

Second Charge

That you, between 18 November 2003 and 20 January 2004, at Avenue Securities Sdn Bhd, Ground Floor, THB Satu, Jalan Damansara Endah, Damansara Heights, 50490 Kuala Lumpur, abetted Chin Chan Leong (NRIC No. 531023-10-5669) who caused to be created a misleading appearance with respect to the price of Fountain View Development Berhad (Company No. 585360-T) shares on a stock market, that is, the Kuala Lumpur Stock Exchange (now known as Bursa Malaysia Securities Berhad), where Chin Chan Leong was indirectly being concerned in transactions of sale and purchase of Fountain View Development Berhad shares that do not involve any change in the beneficial ownership of the said Fountain View Development Berhad shares which have the effect of raising the price of Fountain View Development Berhad shares, which transactions were executed through the central depository securities accounts listed in the Appendix to this charge, and the said offence was committed pursuant to your abetment and you have thereby committed an offence under section 84(1) read together with section 122C(c) of the Securities Industry Act 1983 (Act 280) punishable under section 88B of the same Act.

[5] In the sessions court, the first accused raised a preliminary objection on the ground that the two charges against him were vague and uncertain. A preliminary objection was also raised for the second accused on the ground that the manner of the abetment alleged was not specified in the abetment charges.

[6] These objections were sustained by the learned sessions court judge who directed the prosecution:

(1) to give the first accused further particulars relating to the two principal charges against the first accused; and

(2) to amend the two abetment charges against the second accused.

[7] In allowing the appeals by the prosecution, the learned High Court judge directed the trial in the sessions court to proceed accordingly.

[8] Being dissatisfied, both the accused have filed these appeals.

The Charges

[9] Learned defence counsel Mr Rajan Navaratnam (for the first accused) and Mr Edmond Bon Tai Soon (for the second accused) supported the above directions given by the learned sessions court judge and argued that the learned judge of the High Court has erred in setting aside these directions. They contended that the appeal herein should be allowed.

[10] Ms Roz Mawar Rozain, learned deputy public prosecutor, responded that the learned judge of the High Court was correct in holding that the charges were not defective, and had indeed complied with ss. 152 to 154 of the Criminal Procedure Code ("ss. 152 to 154").

[11] Our perusal of ss. 152 to 154 reveals that they contain comprehensive provisions regulating the form of a charge, the particulars as to time, place and person to be included therein and the manner of committing the offence.

[12] The relevant portions of ss. 152 to 154 merit reproduction as follows:

152. Form of charge

(1) Every charge under this Code shall state the offence with which the accused is charged.

(2) If the law which creates the offence gives it any specific name the offence may be described in the charge by the name only.

(3) If the law which creates the offence does not give it any specific name so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) …

153. Particulars as to time, place and person

(1) The charge shall contain such particulars as to the time and place of the alleged offence and the person, if any, against whom or the thing, if any, in respect of which it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) …

154. When manner of committing offence must be stated

When the nature of the case is such that the particulars mentioned in sections 152 and 153 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

[13] The first accused is alleged to have created a misleading appearance of active trading in securities, contrary to s. 84(1) which, where relevant, reads as follows:

84. False trading and market rigging transaction

(1) Subject to section 87B, no person shall create … a … misleading appearance of active trading in any securities on a stock market in Malaysia.

[14] In our view, s. 84(1) creates various distinct offences, including the two offences alleged in the charges against the first accused *viz* creating a misleading appearance of active trading of securities ("the first charge"); and creating misleading appearance with respect to the price of securities ("the second charge").

[15] In relation to the first accused, the prosecution's compliance with the procedural law contained in ss. 152 to 154 and the ingredients set out in the substantive law under s. 84(1) may be illustrated as follows:

First Charge

(1) Person: Chin Chan Leong (s. 153(1))

(2) Date: Between 18 November 2003 and 20 January 2004 (s. 153(1) read with s. 154)

(3) Offence: Created a misleading appearance of active trading in securities in Fountain View Development Berhad shares under s. 84(1) (s. 152(1) & (2)).

(4) Particulars of how the misleading appearance of active trading was created: Through transactions of sale and purchase of Fountain View Development Berhad (FVDB) shares that do not involve any change in beneficial ownership (s. 154).

(5) Particulars of the involvement of the accused: By indirectly being concerned in the transactions of sale and purchase of FVDB shares that do not involve any change in beneficial ownership of the said shares through the 20 central depositories securities accounts listed in the appendix to the charge (s. 154).

(6) On a stock market in Malaysia: The Kuala Lumpur Stock Exchange (now known as Bursa Malaysia Securities Berhad) (s. 153(1)).

Second Charge

(1) Person: Chin Chan Leong (s. 153(1))

(2) Date: Between 18 November 2003 and 20 January 2004 (s. 153(1))

(3) Offence: Caused to be created a misleading appearance with respect to the price of any such securities, *viz* FVDB shares: (s. 152).

(4) Particulars of how the misleading appearance with respect to the price was caused to be created: Through the transactions of sale and purchase of FVDB shares that do not involve any change in beneficial ownership (s. 154).

(5) Particulars of the involvement of the accused: By indirectly being concerned in the transactions of sale and purchase of FVDB shares that do not involve any change in beneficial ownership of the said shares through the central depositories securities accounts listed in the appendix to the charge (s. 154).

(6) On a stock market in Malaysia. The Kuala Lumpur Stock Exchange (now known as Bursa Malaysia Securities Berhad) (s. 153(1)).

[16] Next, with specific reference to the second accused, s. 122C(c) creates the offence of, *inter alia*, abetment in the following words:

> S. 122C … abetments …
>
> A person who:
>
> (a) …
>
> (b) …
>
> (c) abets … any offences under this Act, whether or not the offence is committed in consequence thereof, commits such offence and is liable to the penalty for such offence.

[17] In our view, it is open to the prosecution to prefer a charge of abetment generally: See *AIR Commentaries on the Code of Criminal Procedure* (7th edn) (vol 2) at pp. 562 and 563, as applied in *Ab Malek Atan v. Public Prosecutor* [2002] 6 CLJ 405 HC per Augustine Paul J (now FCJ).

[18] The proposition that the prosecution is at liberty to prefer a charge of abetment generally is also supported by weighty authorities eg, *Datuk Haji Harun bin Haji Idris & Ors v. PP* [1977] 1 LNS 24 (FC) per Wan Suleiman FJ (as he then was); and *Pasupathy Kanagasaby v. PP* [2005] 1 CLJ 442 (CA) per Tengku Baharudin JCA.

[19] In *Loh Liang Gun & Anor v. PP* [2007] 4 CLJ 467 CA, an analogous argument was advanced for the second appellant there ie, that the trial judge should have invoked s. 158 of the Criminal Procedure Code to amend the charges of abetment under s. 109 to charges under s. 107 of the Penal Code. The prosecution refuted the defence contention as baseless and added that no amendment is necessary.

[20] In delivering the unanimous judgment of this court, I noted that the abetment charges against the second appellant were preferred under s. 109 read with s. 420 of the Penal Code, in order to include the punishment to be meted out for the offence of abetment which is prescribed and contained in s. 109 in the following words:

> **109 Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment**
>
> Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.
>
> Explanation – An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

[21] I also stressed that s. 107 does not provide for any punishment but instead sets out each and every circumstance in which the offence of abetment may be committed, as follows:

> **107 Abetment of a thing**
>
> A person abets the doing of a thing who:
>
> (a) instigates any person to do that thing;
>
> (b) engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of the conspiracy, and in order to the doing of that thing; or
>
> (c) intentionally aids, by any act or illegal omission, the doing of that thing.

[22] In finding the defence contention there to be unsustainable, I stated as follows:

> The amendment raised in the defence contention, if sustained, would have resulted in the accused not being informed of the punishment under s. 109. That would have deprived the second appellant of the opportunity of knowing fully the maximum sentence provided for the offences with which he has been charged, and certainly would have run counter to the fundamental rules of natural justice.

Hence, the abetment charges under s. 109 are flawless and proper. They require no amendment at all.

[23] Reverting to the mainstream of the instant appeal, although the prosecution is at liberty to prefer a charge of abetment generally under s. 122C(c), the prosecution herein has specifically travelled the extra mile and set out the particulars of the principal charges against the first accused in the abetment charges preferred against the second accused. We entertained no doubt that, in relation to the abetment charges, the prosecution has complied with the procedural law contained in ss. 152 to 154, and the substantive law enacted in s. 84(1) read with s. 122C(c).

Conclusion

[24] The foregoing grounds demonstrated that these two appeals were devoid of merits. They were dismissed. We affirmed the direction of the High Court that the trial in the sessions court be proceeded forthwith, as they were registered some five years ago ie, in the year 2005.